

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ENGINEERS JOINT WELFARE, PENSION, SUPPLEMENTAL)
UNEMPLOYMENT BENEFIT AND TRAINING FUNDS, by)
Daniel P. Harrigan, as Administrator; CENTRAL PENSION)
FUND OF THE INTERNATIONAL UNION OF OPERATING)
ENGINEERS AND PARTICIPATING EMPLOYERS, by)
Michael R. Fanning, as Chief Executive Officer; and)
INTERNATIONAL UNION OF OPERATING ENGINEERS,)
LOCAL UNION NO. 106, by Robert J. Jones, as Business)
Manager,)
Plaintiffs,)
- against -)
FOCUS ONE CONSTRUCTION CORP., SANDRA)
VARDINE, Individually and as an Officer of Focus One)
Construction Corp., and IRENEUSZ BALASINOWICZ)
a/k/a ERIC BALASINOWICZ, Individually and as an Officer)
of Focus One Construction Corp.,)
Defendants.)

**AMENDED
STIPULATION
AND ORDER
GRANTING
JUDGMENT**

Civil Action No.:
07-CV-1296 (NPM/GHL)

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs, through their undersigned counsel, and Defendant Focus One Construction Corp. [hereinafter "Focus One"] and Defendant Sandra Vardine, through their undersigned counsel, as follows:

RECITALS

A. The undersigned individuals have full authority required to bind the parties in the above captioned action, as well as the parties' successors, heirs, trustees, administrators, officers, executors, representatives, endorses, assigns, subsidiaries, related entities, affiliates, alter egos, and any purchaser, assignee or transferee of Defendants Focus One and Sandra Vardine to the terms of this Stipulation and

Order Granting Judgment [hereinafter "Order"] and any judgment and/or order resulting from it.

B. On December 13, 2007, Plaintiffs filed a complaint in this action against Defendants [hereinafter "Complaint"] [Docket No. 1].

C. On February 4, 2008, Defendants Focus One and Sandra Vardine filed an Answer to the Complaint, generally denying liability therein. [Docket No. 11].

D. The undersigned parties agree to resolve this litigation under the terms outlined below in accordance with applicable law including, but not limited to, the Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. §1001 et seq.] and Section 301(a) of the Labor Management Relations Act of 1947, as amended [29 U.S.C. §1185(a) et seq.].

E. The undersigned parties concede that this Court has subject matter jurisdiction over this action and that, by agreeing to a judgment in this matter, Defendants Focus One and Sandra Vardine voluntarily consent to this Court exercising jurisdiction over them personally.

F. The parties agree that Plaintiffs have incurred and will continue to incur attorneys' fees and costs and that Plaintiffs are entitled to seek these additional amounts in other cases including, but not limited to, the claim pending against Defendant Ireneusz Balasinowicz a/k/a Eric Balasinowicz herein. The parties further agree that interest and liquidated damages will continue to accrue after September 16, 2008 until the fringe benefit contributions and deductions have been paid and that Plaintiffs are entitled to seek these additional amounts from the Defendant Ireneusz Balasinowicz a/k/a Eric Balasinowicz herein.

G. Defendant Focus One withdraws the Answer to the Complaint and admits the allegations of the Complaint, agreeing that it is party to a collective bargaining agreement with Plaintiff Union, bound to Plaintiffs' Agreements and Declarations of Trust and Collections Policy, and liable for the monies identified in the Complaint, together with interest, liquidated damages, attorneys' fees and costs, all at the rates specified in the Complaint.

H. The parties agree that the terms of the Judgment and Order, as set forth below, constitute full and fair settlement of the claims as raised in the Complaint and should be entered as the judgment in this action by the Court.

I. Defendant Focus One has initiated litigation against The Pike Company in connection with the Alfred E. Smith Office Building, the State University College at Plattsburgh and the Columbia Memorial Hospital Building and Parking Structure projects and has initiated litigation against 99 Washington Avenue, LLC. in connection with the One Commerce Plaza project to collect claimed funds pursuant to its contract and/or change orders with those parties.

JUDGMENT AND ORDER

1. The Court shall enter Judgment in this action in favor of Plaintiffs and against Defendant Focus One Construction Corp. for the sum of \$13,652.43. The Judgment shall bear interest thereon at the rate provided for by 28 U.S.C. §1961(a), and Plaintiffs shall have execution on said Judgment.

2. The Clerk of the Court is directed to enter such Judgment in favor of the Plaintiffs and against Defendant Focus One Construction Corp.

3. On or before December 10, 2008, Defendants Focus One Construction Corp. and Sandra Vardjne, shall execute an Assignment, assigning to the Plaintiffs the sum of \$13,652.43 of the proceeds due, earned, and/or payable to Defendants by 99 Washington LLC in connection with the 99 Washington Avenue (One Commerce Plaza) project and any litigation involving that project.

4. On or before December 10, 2008, Defendants Focus One Construction Corp. and Sandra Vardine shall execute an Assignment, assigning to the plaintiffs the sum of \$13,652.43 of the proceeds due, earned, and/or payable to Defendants by The Pike Company in connection with the Alfred E. Smith Office Building, the State University College at Plattsburgh, and the Columbia Memorial Hospital Medical Office

Building and Parking Structure projects and any litigation involving those projects.

5. If 99 Washington LLC and/or The Pike Company decline to honor the Assignments, Defendants Focus One Construction Corp. and Sandra Vardine agree to execute any and all documents required by 99 Washington LLC and/or The Pike Company to remit payment of \$13,652.43 to the Plaintiffs.

6. The Court shall conditionally dismiss the action against Defendant Sandra Vardine, individually and as an Officer of Defendant Focus One Construction Corp., without prejudice and without attorneys' fees and costs as to either party against the other, reserving to Plaintiffs the right to reopen the action to enforce the terms and conditions of this document.

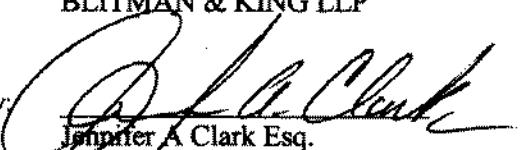
7. Upon compliance with the terms and conditions of this document and payment of the \$13,652.43, the parties shall file an Unconditional Stipulation of Discontinuance against Defendant Sandra Vardine with prejudice and without attorneys' fees and costs.

8. The Court shall retain jurisdiction of this matter for purposes of enforcing the terms and conditions of the Judgment and Order.

DATED: March 16, 2009

BLITMAN & KING LLP

By:


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DATED: March 12, 2009

COUCH DALE, PC

By:


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Facsimile: (518) 220-9587
E-Mail: mcouch@couchdale.com

SO ORDERED:

Dated: 4/21, 2009



Honorable Neal P. McCurn
United States District Court Senior Judge

(collig\FocusOne-EJBF-StopJmt) jlr